

[[Labor Relations Agency Stationery]

ORDER AND DECISION PERTAINING TO DISMISSAL OF
UNFAIR PRACTICE CHARGES MADE BY JOHN BAXANDALL, et al.

ORDER AND DECISION NO. 18

Findings of Fact:

1. On July 7, 1975, John Baxandall executed a written complaint, as provided for by AS 23.40.120 and filed same with the Alaska State Labor Relations Agency. A similar charge was filed by John A. Levorsen on October 7, 1975.

2. The aforementioned complaint is against the Alaska Public Employees Association, with two specifications as set forth below:

(a) The first complaint is that the APEA is in violation of AS 23.40.110 (b) (2) by virtue of the facts that APEA is the bargaining agent for more than one unit without being able to allocate costs of representation among these units, that APEA is unable to allocate costs of representation as between members and non-members, that APEA's costs include debt retirement and that the costs of such debt retirement should not be paid from service fees collected under the agency shop agreement between APEA and the State, and that APEA is in violation of its Articles of Incorporation by exceeding the debt limits set forth therein.

(b) The second complaint alleges that APEA is in violation of Article VII, Section 1a of the collective bargaining agreement between APEA and the State covering the General Government Unit, which states that "APEA owes the same responsibilities to all employees and is to provide benefits and services to all Bargaining Unit Members whether or not they are members of APEA." The complaint alleges that APEA members receive monthly newsletters, membership cards, ballots and notices which are not received by non-members, and that non-members are excluded from APEA functions such as the General Assembly.

3. The complainant alleged that if services provided exclusively for members were not charged for to non-members the service fee could be reduced by as much as fifty cents per month. At the time the complainant made this allegation he was not receiving the APEA newsletter as part of services made available only to members; however, at the time of the hearing, on December 15, 1975, in Anchorage, he stated that since filing the original complaint he had been receiving it. The cost of the newsletter was not stated.

4. The complaint requests that there should be a different fee for members and non-members of APEA and different fees for different units represented by APEA. 5. AS

23.40.110 (b) (2) reads as follows:

"(b) Nothing in this chapter prohibits a public employer from making an agreement with an organization to require as a condition of employment (2) payment by the employee to the exclusive bargaining agent of a service fee to reimburse the exclusive bargaining agent for the expense of representing the members of the bargaining unit."

6. 2 AAC 10.240 (c) states:

"Relevant decisions of the National Labor Relations Board will be given great weight in determining what constitutes an unfair labor practice under AS 23.40.110."

7. At a hearing on this matter in Juneau, on November 10, 1975, the Alaska Public Employees Association stated that the newsletter and other services not exclusively related to the exercise of membership privileges are and will continue to be furnished to members and non-members alike.

At a further hearing on this matter in Anchorage on December 15, 1975, The Alaska Public Employees Association stated the following to be facts:

(a) Any costs of legislative representation inure to the benefit of members and non-members alike, being directly related to the collective bargaining process, since the legislature has fiscal control over the results of collective bargaining.

(b) Political activity is not directly undertaken by APEA but by an organization known as "EPIC," which is financed by monies other than membership or service dues.

(c) The debt retirement referred to in the complaint is for debts incurred as part of the cost of collective bargaining.

(d) Periodic audits are made and submitted to the membership and are not confidential.

(e) Certain activities referred to by the complainants relating to group insurance benefits have administrative costs that are reimbursed to APEA by the carrier.

(f) According to the by-laws, non-members may attend APEA membership meetings as observers (without voting privileges) unless excluded by a two-thirds vote. In general, APEA stated the belief that the cost of providing representation to non-members was at least the same as that of providing representation to members.

8. APEA contends, as a preliminary matter, that the Statute in question here, the Alaska Public Employment Relations Act, permits a union shop agreement, in AS

23.40.110(b)(1). Under a union shop agreement it is permissible to require full membership and payment of union dues as a condition of employment. Therefore it is unsupportable to argue that the same Act expresses any policy against agency shops, which is a much less restrictive arrangement. The Statute does not do this; it is expressly permitted in part (b)(2) of the same section.

APEA contends that the Agency fee paid by non-APEA members equals the membership dues, which it should because the benefits received by non-members are equal to those received by members.

APEA contends that the complainants showed no specific facts that need be responded to with respect to services provided to members that are unavailable to non-members.

Conclusions:

1. AS 23.40.110(b)(2) is an express lack of prohibition on the public employer. In itself it cannot be used as the basis of an unfair practice finding against an employee organization.

2. There was no evidence presented that there was any legislative intent to support the conclusions urged by the complainants.

3. There was no showing that if, indeed, APEA is violating its Articles of Incorporation such violations are also violations of the Public Employment Relations Act, or that the Labor Relations Agency would be the proper jurisdiction to hear such allegations.

4. The evidence presented does not support a conclusion that anything more than a minimal amount, if any, of dues or fees charged under APEA's Agency Shop agreement with the State go to provide any greater benefits to members of APEA than are available to non-members than are in bargaining units represented by APEA.

5. Both the complainants and the APEA have contended that Alaska law only should govern cases such as this, and there has been no Alaska case law cited to support the complaints hereunder.

6. There are insufficient grounds to support the complaint, and the complaint should therefore be dismissed.

DECISION AND ORDER

The complaints are dismissed.

DATED: February, 24, 1976.

C. R. "Steve" Hafling, Chairman

Ronald M. Henry, Member

Absent

Morgan Reed, Member